

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee**

September 10, 2001

**In Re:**        *BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*

**Docket No. 97-00309**

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**INITIAL ORDER OF HEARING OFFICER  
ON PETITION OF BELL SOUTH TELECOMMUNICATIONS, INC. FOR  
CLARIFICATION AND RECONSIDERATION OF INITIAL ORDER OF HEARING  
OFFICER ON JULY 12, 2001, STATUS CONFERENCE AND RESTATEMENT OF  
BELL SOUTH'S POSITION**

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This matter is before the Hearing Officer for consideration of the *Petition of BellSouth Telecommunications, Inc. for Clarification and Reconsideration of Initial Order of Hearing Officer on July 12, 2001 Status Conference and Restatement of BellSouth's Position* ("Petition for Clarification and Reconsideration"). For the reasons that follow, the *Petition for Clarification and Reconsideration* is denied. Notwithstanding the foregoing, the issues for the Phase I hearing in this proceeding are clarified as set forth herein.

**I.     History of the Case**

On May 30, 2001, BellSouth Telecommunications, Inc. ("BellSouth") filed *BellSouth Telecommunications, Inc.'s Preliminary Notice of Filing and Request for Scheduling Conference* with the Tennessee Regulatory Authority ("TRA" or "Authority"), in which it requested the

setting of a scheduling conference.<sup>1</sup> Pursuant to BellSouth's request, a Status Conference in this matter was held on July 12, 2001. On August 10, 2001, the Hearing Officer issued the *Initial Order of Hearing Officer on July 12, 2001, Status Conference* ("Initial Order"). BellSouth filed its *Petition for Clarification and Reconsideration* on August 27, 2001. Responses to the *Petition for Clarification and Reconsideration* were submitted by AT&T Communications of the South Central States, Inc., and TCG MidSouth, Inc. (collectively "AT&T") and MCI WorldCom Network Services, Inc. ("MCIWorldCom") on September 5, 2001.

## **II. BellSouth's Petition for Clarification and Reconsideration**

In its *Petition for Clarification and Reconsideration*, BellSouth set forth three (3) areas of concern. First, the *Initial Order* provided that a hearing on issues other than Track A issues, including Section 272 affiliate requirements and the public interest, would be held subsequent to the hearing on Track A. It is BellSouth's position that its 271 case before the Authority is limited to a review of BellSouth's compliance with Section 271(c), and thus such review should not address either BellSouth's compliance with Section 272 or the public interest.

Next, the *Initial Order* acknowledged both the purpose and status of the Authority's pending Performance Measurements Docket, *In Re: Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, TRA Docket No. 01-00193, and BellSouth's position that its Georgia-approved service

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<sup>1</sup> On November 22, 1999, the Tennessee Regulatory Authority ("TRA" or "Authority"), pursuant to the request of BellSouth Telecommunications, Inc., issued its *Order Accepting BellSouth Telecommunications, Inc.'s Notice of Voluntary Dismissal Without Prejudice and Withdrawal of Advance Notice of Section 271 Filing, In Re: BellSouth Telecommunications, Inc.'s Entry into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, TRA Docket No. 97-00309 (Nov. 22, 1999). The *Order Accepting Withdrawal* provided that "[t]his docket shall remain open for the original purpose set forth in the Authority's [*Order Instituting Formal Inquiry and Adopting Procedure*, TRA Docket No. 97-00309 (March 21, 1997)]." A detailed account of the history of this matter is set forth in the *Order Accepting BellSouth Telecommunications, Inc.'s Notice of Voluntary Dismissal Without Prejudice and Withdrawal of Advance Notice of Section 271 Filing*, TRA Docket No. 97-00309 (Nov. 22, 1999).

quality measurements (“SQMs”) are “more than sufficient for the Authority to support BellSouth’s Section 271 application at the FCC, until such time as the Authority orders, and BellSouth implements, alternative performance measures.”<sup>2</sup> BellSouth seeks to ensure that the Authority fully understands its above-stated position, as expressed in the *Initial Order*, that “it is not necessary for the agency to complete the Performance Measurements Docket before proceeding with its 271 review.”<sup>3</sup>

Finally, the *Initial Order* provides that “[t]he Authority . . . is requesting Tennessee-specific data for all measurements.”<sup>4</sup> Given its intention to rely upon the regionality of its Operations Support Systems (“OSS”), BellSouth maintains that regional performance data on ordering and pre-ordering, not Tennessee-specific data, is appropriate in its 271 case before the Authority.

### **III. BellSouth’s Request for Reconsideration on Whether Section 272’s Separate Affiliate Requirements and the Public Interest are Properly Before the Authority in BellSouth’s 271 Case**

#### **a. Arguments of the Parties**

##### **BellSouth**

Section 271(d)(2)(B) of the Federal Telecommunications Act of 1996 (the “Act”) provides that:

Before making any determination under this subsection, the Commission shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).

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<sup>2</sup> *Initial Order*, p. 10 (quoting *BellSouth Telecommunications, Inc.’s Reply to AT&T’s Motion to Dismiss BellSouth’s Proposed Section 271 Schedule and the Response of XO Tennessee and Time Warner Telecom to AT&T’s Motion to Dismiss*, TRA Docket No. 97-00309, pp. 5-6).

<sup>3</sup> *Initial Order*, p. 10.

<sup>4</sup> *Id.* at n. 4.

Based on the foregoing, it is BellSouth's position that the Authority should limit its review of BellSouth's 271 case to Section 271(c). According to BellSouth, "[t]he FCC does not expect, nor does the law require, the TRA to opine on an ILEC's compliance with Section 272 or the public interest requirement."<sup>5</sup> In support of its position, BellSouth represents that "no Section 271 FCC decision to date has included a state recommendation on these issues" and that "[n]o state commission in BellSouth's region is considering Section 272 compliance or public interest."<sup>6</sup>

### **AT&T**

It is AT&T's position that "the scheduled hearing should include both testimony regarding the presence of facilities-based carriers and the associated issue of the level of competition in the Tennessee market for local service."<sup>7</sup> BellSouth's Section 271 filing, according to AT&T, "reflects this association."<sup>8</sup> Finally, AT&T "requests that the Authority find that the proper scope of the scheduled hearing includes both the presence of facilities-based carriers and the present and projected levels of competition in Tennessee."<sup>9</sup>

### **MCIWorldCom**

MCIWorldCom maintains that it is inconsistent for BellSouth to both file pleadings that address the public interest issue and contend that the Authority should not address the issue.<sup>10</sup> According to MCIWorldCom, other state commissions, including Oregon and Colorado, are

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<sup>5</sup> *Petition for Clarification and Reconsideration*, p. 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Response of AT&T to the Petition of BellSouth Telecommunications, Inc. for Clarification and Reconsideration of Initial Order of Hearing Officer on July 12, 2001 Status Conference and Restatement of BellSouth's Position*, p. 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Response of MCIWorldCom to the Petition of BellSouth Telecommunications, Inc. for Clarification and Reconsideration*, p. 1.

considering non-checklist items.<sup>11</sup> Further, MCIWorldCom represents that BellSouth “has not argued in any state that the public interest issue should not be discussed during the company’s 271 hearing.”<sup>12</sup> Finally, MCIWorldCom emphasizes that:

BellSouth itself argued during its first 271 hearing and continues to argue in the current proceeding that the public will benefit by the swift granting of the carrier’s application because of increased competition in the interLATA market. Such arguments have nothing to do with the checklist but are relevant only to the public interest issue. BellSouth cannot argue on the one hand that the public will gain from granting the application and then, on the other hand, that the public interest is not an issue in this proceeding.<sup>13</sup>

**b. Discussion and Analysis**

While it may be accurate to observe that the *Initial Order* reaches beyond the conservative boundaries of BellSouth’s above-stated position, such view alone, however, does nothing to render the *Initial Order* inconsistent with the TRA’s consultative duty pursuant to the Act.

BellSouth is careful not to contend, nor could it, that the Act precludes state commissions from reviewing a Section 271 application for compliance with Section 272 and for consideration of the public interest. In support of its position, BellSouth represents to the Authority that “no Section 271 FCC decision to date has included a state recommendation on these issues.”<sup>14</sup> While BellSouth’s language is somewhat ambiguous as to whether the FCC ignored state recommendations, or that state recommendations were not forthcoming, BellSouth’s ultimate message is clear. BellSouth is, in effect, asserting that the FCC expects the Authority, when evaluating BellSouth’s Section 271 application, to assume a *laissez-faire* posture with respect to

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<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* On all other issues raised in the *Petition for Clarification and Reconsideration*, MCIWorldCom adopts the positions of AT&T. *Response of MCIWorldCom to Petition for Clarification and Reconsideration*, p. 1.

<sup>14</sup> *Petition for Clarification and Reconsideration*, p. 2.

evaluations of Section 272 and the public interest.<sup>15</sup> Nonetheless, whatever BellSouth's implication, it is certainly not controlling.

The Tennessee Regulatory Authority is not alone in concluding that an evaluation of BellSouth's compliance with Section 272 and the public interest is consistent with our consultative role. The Kansas Corporation Commission reviewed and evaluated Southwestern Bell Telephone Company's ("Southwestern Bell") compliance with Section 272 of the Act in its 271 consultative role.<sup>16</sup> Further, the FCC acknowledged the Kansas Commission's 272 review in its 271 Order regarding Southwestern Bell.<sup>17</sup> Moreover, the Kansas Corporation Commission, the Pennsylvania Public Utility Commission, and the Texas Public Utility Commission have considered the public interest when reviewing 271 applications.<sup>18</sup>

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<sup>15</sup> *But see, In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, FCC CC Docket No. 99-295, p. 201, para. 403 (December 22, 1999) ("We note that neither the New York Commission nor the Department of Justice addressed Bell Atlantic's showing of section 272 compliance.").

<sup>16</sup> *Report of the State Corporation Commission of the State of Kansas on Southwestern Bell Telephone Company's Compliance with Section 271, In the Matter of Application of SBC Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Kansas and Oklahoma*, FCC CC Docket No. 00-217, p. 34 (Nov. 20, 2000) ("Staff thoroughly examined SWBT's compliance with the requirements of § 272."). See generally *AT&T Communications of the South Central States, Inc.'s and MCI Telecommunications Corporation's Joint Proposed List of Issues*, TRA Docket No. 97-00309, p. 4 (Jan. 1998) (Issue No. 28: "Has BellSouth met the requirements of Section 272 of the Telecommunications Act of 1996?").

<sup>17</sup> *Memorandum Opinion and Order, In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, FCC CC Docket No. 00-217, p. 7, para. 13 (Jan. 22, 2001). See also *Order Regarding Recommendation on 271 Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996*, MPSC Case No. TO-99-227, pp. 90-91 (March 15, 2001) (Although the Commission recognized that it was not required to make a recommendation on 272 compliance, the Commission's Order provided that "the Commission concludes that SWBT complies with the requirements of section 272.").

<sup>18</sup> *Report of the State Corporation Commission of the State of Kansas on Southwestern Bell Telephone Company's Compliance with Section 271, In the Matter of Application of SBC Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Kansas and Oklahoma*, FCC CC Docket No. 00-217, p. 36 (Nov. 20, 2000) ("Having found SWBT in compliance on the checklist items, the Commission will examine the public interest issue."); *Consultative Report of the Pennsylvania Public Utility Commission, In the Matter of Application of Verizon Pennsylvania, Inc. et al., for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the Commonwealth of Pennsylvania*, FCC CC Docket No. 01-138, p. 4 (June 25, 2001) ("Therefore, with open local markets supported by functional/structural separation of Verizon PA and more long distance choice, the PAPUC concludes that approval of Verizon PA's

While the agency's intent to review BellSouth's compliance with Section 272 and the public interest may be inconsistent with BellSouth's position, such intent is neither inconsistent with the Act nor incompatible with other state commission recommendations.<sup>19</sup>

**c. Conclusion**

For the foregoing reasons, BellSouth's request for reconsideration is denied.<sup>20</sup>

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application is in the public interest.”); and *Evaluation of The Public Utility Commission of Texas, In the Matter of Application of SBC Communications Inc., and Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas*, FCC CC Docket No. 00-4, p. 98 (Jan. 31, 2000) (“The Texas Commission has used the public interest requirement to review whether other relevant factors exist that would frustrate the intent of Congress that markets be open.”). See also *Order Regarding Recommendation on 271 Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996*, MPSC Case No. TO-99-227, p. 86 (Mar. 15, 2001) (“The Act does not require this Commission to make a recommendation to the FCC on the public interest consequences of SWBT's interLATA entry. Yet this Commission is uniquely situated to evaluate the probable effects of SWBT's potential entry into the interLATA market in Missouri. Having carefully considered the arguments on both sides of this issue, this Commission has concluded that a recommendation to the FCC is appropriate and that SWBT's interLATA entry would serve the public interest.”). Further, while not dispositive, it is appropriate to note that the *TRA Staff Report*, February 1997, which is a part of the evidentiary record in this matter, examined the public interest issue in Tennessee. Finally, the *Joint Issues Matrix*, TRA Docket No. 97-00309, p. 9 (April 1, 1998), submitted by BellSouth, AT&T, MCI, and Sprint lists issue 20 as follows: “Is approval of BellSouth's entry into the interLATA market in Tennessee in the public interest?”

<sup>19</sup> At no point during the July 12, 2001, Status Conference, although provided ample opportunity to do so, did BellSouth communicate that it did not intend to file evidence regarding 272 or the public interest. While certain comments made by BellSouth's counsel at said Status Conference may now be “construed” as consistent with the position set forth in its *Petition for Clarification and Reconsideration*, the totality of the comments then made taken in context suggests otherwise. For example, Director Malone asked: “I don't mean to quibble over so much the form as to understand that what is filed with the notice will constitute in substance your 271 application.” Counsel for BellSouth responded: “It will.” *Transcript of Proceeding, July 12, 2001, TRA Docket No. 97-00309*, p.19. Shortly thereafter, Counsel for Sprint Communications, L.P. asked: “Attached to the proposed application would be your affidavit and the rest of your full case? I mean, that's clear?” Counsel for BellSouth responded: “Yeah.” *Id.* at 20. The words “the rest of your full case” do not appear to exempt either the 272 requirements or the public interest issue.

<sup>20</sup> Other reasons support the denial of BellSouth's request here as well. For instance, circumstances exist, which may evolve in this case, under which a § 271(c)(1)(A) evaluation includes, among other things, a review of a compliant SGAT to satisfy § 271(c)(2)(A)(ii). Such a review may implicate § 252(f), which could, by its very terms, lead to public interest considerations.

IV. **BellSouth's Request for Clarification of the Initial Order Regarding BellSouth's Position that the Authority's Performance Measurements Docket Need Not Be Concluded for the Authority to Proceed with BellSouth's 271 Case**

a. **Arguments of the Parties**

**BellSouth**

As articulated at the Status Conference on July 12, 2001, and in its comments to AT&T's Motion to Dismiss,<sup>21</sup> it is BellSouth's position that "the TRA can, and should, rely on the proposed Interim SQM, and Tennessee-specific data reported in accordance with that SQM, to assess BellSouth's compliance with Section 271. . . . BellSouth does not believe that the TRA need wait on the completion of the performance measurements docket to render an opinion on BellSouth's compliance with the competitive checklist."<sup>22</sup> BellSouth "wishes the TRA to clarify this point in order to avoid confusion."<sup>23</sup>

**AT&T**

AT&T contends that "BellSouth's proposed Interim SQM and its regional data are insufficient to meet the Authority's needs" and thus urges the Authority to "maintain its position that BellSouth must support its Tennessee Section 271 application with Tennessee data."<sup>24</sup> According to AT&T, the FCC supports "a state-specific evaluation of BellSouth's performance measures and data."<sup>25</sup>

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<sup>21</sup> *BellSouth Telecommunications, Inc.'s Reply to AT&T's Motion to Dismiss BellSouth's Proposed Section 271 Schedule and the Response of XO Tennessee and Time Warner Telecom to AT&T's Motion to Dismiss*, TRA Docket 97-00309, pp. 2-6 (July 26, 2001).

<sup>22</sup> *Petition for Clarification and Reconsideration*, p. 3.

<sup>23</sup> *Id.*

<sup>24</sup> *Response of AT&T to the Petition of BellSouth Telecommunications, Inc. for Clarification and Reconsideration of Initial Order of Hearing Officer on July 12, 2001 Status Conference and Restatement of BellSouth's Position*, p. 3

<sup>25</sup> *Id.* at 4.



**b. Discussion and Analysis**

BellSouth's position was both well articulated and well understood at the July 12, 2001, Status Conference. Moreover, as acknowledged by BellSouth, BellSouth's position was accurately reflected in the *Initial Order*.<sup>26</sup> Thus, the Hearing Officer is of the opinion that no clarification, on the agency's part, is necessary. Notwithstanding BellSouth's position, it remains for the Authority, in its Section 271 consultative role, to determine what performance measurements and enforcement mechanisms, in its reasoned opinion, satisfy the requirements of the Act. While the efforts of BellSouth in other states are commendable, and may in fact prove useful in Tennessee, it is for the Authority to determine the usefulness thereof and 271 compliance in Tennessee. Recognition of the Authority's discretion does not, in and of itself, negatively affect BellSouth.

BellSouth would have the agency adopt, on an interim basis, its Georgia-approved SQMs in this Tennessee 271 case.<sup>27</sup> Before adopting the same, however, the agency must find, after a hearing, said SQMs 271 compliant. As a matter of efficiency, such an approach may, depending upon the circumstances, clash with the Authority's decision to establish its own Performance Measurements Docket for the exact same purpose – developing 271 compliant performance measurements and enforcement mechanisms.

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<sup>26</sup> *Petition for Clarification and Reconsideration*, p. 3.

<sup>27</sup> In light of BellSouth's request in this regard, its testimony in the Authority's Performance Measurements Docket hearing is noteworthy. BellSouth witness Mr. Coon testified at one point that the agency should rely upon and adopt the Georgia-approved SQMs because "we had an evidentiary hearing[.]" *TRA Transcript of Proceeding, August 21, 2001, Vol. IIA*, TRA Docket 01-00193, p. 34. When asked what his testimony would be if other states had evidentiary hearings but acted differently than Georgia, Mr. Coon testified that the Authority should make an "independent" determination on Tennessee's performance measurements and enforcement mechanisms instead of simply adopting Georgia's SQMs on BellSouth's recommendation. *Id.* at 37. When asked to reconcile the foregoing statements, Mr. Coon testified, "I can't." *Id.* at 38. Mr. Coon further testified that "I don't mean to imply the Authority should accept what Georgia did, what Louisiana did, any more than what Texas did or Florida did." *Id.* at 39.

The Authority has conducted hearings in its Performance Measurements Docket and now awaits the filing of post-hearing briefs. Absent some unforeseen occurrence, it is likely that this case will come to a conclusion this fall. While a certain timeframe may be somewhat speculative, it appears that BellSouth hopes to submit its Tennessee 271 application before the Federal Communications Commission (“FCC”) at the end of the year.<sup>28</sup>

If later circumstances, too speculative now to predict, persuade the Authority that it is in the best interest of the State of Tennessee to adopt the Georgia-approved SQMs, it may then do so. But, it would be premature, in the opinion of the Hearing Officer, to presume the adoption of the same and to preclude the use of Tennessee-approved performance measurements and enforcement mechanisms in the 271 case. As we have observed before, here and in other states, despite sound approximations and best intentions, the actual timing of 271 filings with the FCC is oftentimes not consistent with previous, even good, faith estimates.

Hence, while the Authority may later determine to accept the course advocated by BellSouth, the decision, and the timing thereof, is the Authority’s to make. Foreclosing other options at this stage may later prove imprudent.

**c. Conclusion**

For the foregoing reasons, BellSouth’s request for clarification is deemed unnecessary and denied.

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<sup>28</sup> *TRA Transcript of Proceedings, July 12, 2001*, TRA Docket No. 97-00309, p. 33 (“We don’t have a specific date in mind. . . . [W]e would like to be in a position toward the end of this year to file.”) (Counsel for BellSouth).

V. **BellSouth's Request for Clarification of the Initial Order's Request for Tennessee-Specific Performance Data**

a. **Arguments of the Parties**

**BellSouth**

BellSouth intends to rely upon regional data with respect to ordering and pre-ordering throughout its nine-state region. The *Initial Order* requests that BellSouth submit Tennessee-specific data in this docket. BellSouth has asked the Authority to clarify its request for Tennessee-specific data.

**AT&T**

It is AT&T's position that "reliance on regional ordering and pre-ordering performance data is inappropriate in Tennessee, because BellSouth's ordering and pre-ordering performance varies from state to state. . . . The lack of uniformity among BellSouth's systems makes regional data irrelevant to an evaluation of BellSouth's performance in Tennessee."<sup>29</sup> Regardless of whether the Authority develops its own performance measurements or adopts the Georgia-approved SQMs, it is AT&T's opinion that the Authority should require BellSouth to provide Tennessee-specific data for all measurements in Tennessee.<sup>30</sup>

b. **Discussion and Analysis**

As noted earlier, the *Initial Order* provides that the Authority is requesting Tennessee-specific data for all measurements. In establishing the base framework from which it would derive performance measurements and enforcement mechanisms, the Authority selected the decisions reached in *In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, TRA

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<sup>29</sup> *Response of AT&T to the Petition of BellSouth Telecommunications, Inc. for Clarification and Reconsideration of Initial Order of Hearing Officer on July 12, 2001 Status Conference and Restatement of BellSouth's Position*, p. 5.

Docket No. 00430.<sup>31</sup> In that docket, the Authority ordered that “[a]ll measurements shall be at the Tennessee level.”<sup>32</sup> This order has not been modified by the agency.

Unless the Authority modifies its ruling requesting Tennessee-specific data on all measurements, such decision shall stand.

**c. Conclusion**

For the foregoing reasons, BellSouth’s request for clarification with respect to the requirement of Tennessee-specific data is hereby denied.

**VI. Hearing Officer’s Clarification of Phase I Hearing**

In the *Initial Order*, the Hearing Officer determined that a Phase I hearing in this docket would cover issues relevant and material to Section 271(c)(1)(A), and that a Phase II hearing in this docket would be held on all other 271 issues.<sup>33</sup> Given the *Petition for Clarification and Reconsideration*, and the responses thereto, the Hearing Officer has concluded that it is appropriate, and in the interest of judicial economy, to clarify the issues for the Phase I hearing.

The parties to this proceeding are hereby advised that the intent of the Phase I hearing is to receive and evaluate evidence on BellSouth’s compliance with Section 271(c)(1)(A), and the inherent issues or sub-issues emanating therefrom, including the resulting opportunity to compete and status of competition in the local telephony market in Tennessee and the public interest, which are, generally, inseverable from a Section 271(c)(1)(A) demonstration. The primary

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<sup>30</sup> *Id.* at 5-6.

<sup>31</sup> See *Order Consolidating Docket Nos. 99-00347 and 00-00392 into Docket No. 01-00193 and Opening Docket No. 01-00362, In Re: Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, TRA Docket No. 01-00193, p. 7 (May 15, 2001).

<sup>32</sup> *Interim Order of Arbitration Award, In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, TRA Docket No. 00430, p. 16 (Aug. 11, 2000).

<sup>33</sup> *Initial Order*, p. 13. Such issues would include, but not be limited to, any and all remaining Section 271(c)(2) issues not resolved in the entirety in other TRA proceedings.

purpose of this clarification is to ensure an efficient hearing and an orderly evidentiary process in this entire proceeding.<sup>34</sup>

## **VII. Conclusion**

For the aforementioned reasons, the requests contained in BellSouth's *Petition for Clarification and Reconsideration* are denied, consistent with this Initial Order. Notwithstanding the foregoing, however, the *Initial Order* is otherwise clarified as set forth herein.

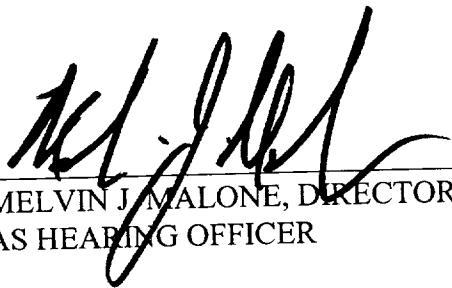
### **IT IS THEREFORE ORDERED THAT:**

1. BellSouth Telecommunications, Inc.'s Petition for Clarification and Reconsideration is denied.
2. The issues for the Phase I hearing in this proceeding are clarified as set forth herein.
3. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Order.

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<sup>34</sup> Given the status of this proceeding, no party is materially harmed by this clarification. BellSouth's direct case was filed before the *Initial Order* was issued and no party has submitted any pre-filed testimony since the *Initial Order* was issued.

4. In the event this Order is not appealed to the Directors of the Tennessee Regulatory Authority within fifteen (15) days, this Order shall become final and shall be effective from the date of entry.



MELVIN J. MALONE, DIRECTOR  
AS HEARING OFFICER

ATTEST:



K. David Waddell, Executive Secretary